

RECEIVED
CENTRAL FAX CENTER

MAY 07 2008

REMARKS

Claims 1-6 are pending in this application. By this Amendment, claims 1 and 6 have been amended to address informalities raised by the Examiner and to more particularly point out and distinctly claim the composition of the polymer blend, support for which can be found at page 6, lines 6-25. Claims 4 and 5 have been amended to more particularly point out and distinctly claim that the recited film comprises a haze of less than 16%, support for which can be found at page 5, line 30. Claims 7-9 are new, support for which can be found in claims 2, 4, 5, and in the specification at page 5, line 30. No new matter has been introduced as a result of this Amendment.

Applicant has also submitted with this Amendment a Supplemental Information Disclosure Statement. Applicant respectfully requests that the references listed on the accompanying PTO-1449 form be considered by the Examiner and be made of record herein.

Claim Objections

In response to the objections to claims 1 and 6, appropriate correction has been made. Reconsideration and withdrawal of the Objection respectfully is requested.

Claim Rejections**Rejections Under 35 U.S.C. §112****A. Response to rejection of claims 1-6 under 35 U.S.C. 112, second paragraph.**

In response to the rejection of claims 1-6 under 35 U.S.C. 112, second paragraph, Applicant respectfully submits that the Examiner's contention that the claims recite "a composition comprising 80-100% by weight of a random ethylene polymer and 5-30% by weight of a random interpolymers of propylene," is not correct. The portion of the claim that the Examiner refers to actually recites 80-100 parts by weight, and 5 to 30 parts by weight. Applicant respectfully submits that, by expressing these ranges in parts by weight, rather than in

percent, there is nothing at all incongruous or indefinite about the ranges, and that they fully comport with 35 U.S.C. 112, second paragraph.

With respect to the Examiner's contention that use of the word "optionally" renders the claim indefinite, appropriate correction has been made.

Reconsideration and withdrawal of the Rejection respectfully is requested.

Rejections Under 35 U.S.C. § 103

B. Response to rejection of claims 1-3 and 6 under 35 U.S.C. §103(a) as being unpatentable over Karaoglu.

In response to the rejection of claims 1-3, and 6 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,492, 010 of Karaoglu et al. ("Karaoglu"), Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverses the Rejection.

The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness. Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. See MPEP §2143. Finally, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (C.C.P.A. 1974)

Based on columns 9 and 10 of Karaoglu, the Examiner has argued that the disclosed blend of IT8, IT3 and IT11 meets the claimed limitation directed to the ester content of the ethylene polymer composition. However, component (I) of the current claims recites an ester content of 2 to 8% for a blend of an ethylene ester copolymer and a low density ethylene homopolymer. In contrast, IT8 is an ethylene plastomer, and IT3 is a linear low density polyethylene. There is thus no teaching or suggestion in Karaoglu of blending an ethylene ester copolymer with a low density ethylene homopolymer having a density value of 0.915 to 0.932 g/ml.

Moreover, the Examiner has acknowledged that Karaoglu is silent as to the MD tear resistance, the TD tear resistance and the MD tensile strength of the stretch wrap film. Nevertheless, the Examiner argued that the polymer composition of Karaoglu's stretch wrap film and the instant stretch wrap film were "substantially identical," and further concluded that the recited properties were inherent. As discussed above, Applicant respectfully submits that there are clearly unobvious differences between the polymer compositions of Karaoglu's films and those recited in the current claims, so that the film properties cannot be considered inherent. Therefore, Applicant respectfully requests that the Examiner consider the recited film properties in evaluating the patentability of the claims.

Reconsideration and withdrawal of the Rejection respectfully is requested.

C. Response to rejection of claims 1-3 and 6 under 35 U.S.C. §103(a) as being unpatentable over Cooper.

In response to the rejection of claims 1-3 and 6 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,504,434 of Cooper ("Cooper"), Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverses the rejection.

The threshold showing required under §103 has been discussed above.

The Examiner has acknowledged that Cooper: (1) is silent as to density of the ethylene polymer composition having an ester content (I) ranging from 0.92 to 0.94 g/ml; (2) is silent as to the ethylene-based polymer component (II) having a density ranging from 0.9 to 0.930 g/ml and a melt flow rate up to 4 g/10 min.; (3) is silent as to the MD tear resistance, the TD tear resistance and the MD tensile strength of the stretch wrap film; and (4) does not explicitly disclose the specific 0.5 to 20 mol% of alpha-olefin in the linear polyethylene (II). Nevertheless, the Examiner has argued that the instant claims are obvious over Cooper, by contending that Cooper's compositions are "substantially identical" to the compositions in the claimed films, and that the alpha-olefin content of the linear polyethylene compound IIi is a results-effective variable.

First, with respect to (1), (2), and (3) above, the Examiner appears to rely on Cooper's Example 1 as basis for the contention that the reference discloses the overall percentage of

claimed component (II), and Example 6 for the contention that the reference discloses the ester content of the claimed interpolymer. However, Example 1 discloses a blend of an EVA compound containing 12% of vinyl acetate. This level of vinyl acetate is clearly far greater than the upper limit claimed. In addition, Example 6 discloses a linear low density polyethylene present in a blend at a normalized percentage of 51% ($50\% \text{ LLDPE} / (50\% \text{ LLDPE} + 48\% \text{ EVA}) \times 100$), while EVA is present at a normalized percentage of 49%; both of which are also outside the claimed range. Applicant respectfully submits that the Examiner's conclusion of inherency is based on hindsight, selecting portions of compositions from different examples in Cooper, in order to arrive at Applicant's film compositions, and using Applicant's specification as a blueprint. The relied-upon examples are clearly not "substantially identical" with the claimed compositions, since, as discussed above, in one example cited by the Examiner, the level of ester in the interpolymer is 50% higher than the upper limit of the claimed range, and in the other example cited by the Examiner, both components of the compositions are outside the claimed range. Therefore, since there are clearly unobvious differences in the polymer compositions of Cooper's films and those recited in the current claims, the claimed film properties cannot be considered inherent. Therefore, Applicant respectfully requests that the Examiner consider the recited film properties in evaluating the patentability of the claims.

With respect to (4), Applicant respectfully submits that the Examiner has improperly read this limitation out of the claims. The Examiner concludes that the percentage of alpha olefins in the linear polyethylene component (II) are a results effective variable based on the contention that "the rheological properties of the linear polyethylene are variables that can be modified, among others, by adjusting the mol% of alpha-olefin in the linear polyethylene." However, Cooper does not provide guidance on choosing the particular alpha-olefin level of the linear polyethylene component so as to arrive at the claimed rheological properties, particularly in view of the fact that they are affected, as acknowledged by the Examiner, by other variables. Indeed, as the Examiner has acknowledged, Cooper does not explicitly disclose the specifically claimed range of alpha-olefin in the linear polyethylene (III). Therefore, Applicant respectfully requests that the Examiner consider the recited claim limitation in evaluating the patentability of the claims.

In addition to the above discussion addressing the Examiner's inherency and results-effective variable arguments, there is no teaching or suggestion in Cooper that would lead one

skilled in the art to modify Cooper's teachings to arrive at the present claims. It would not be obvious to piece together selected components of different examples to arrive at the presently claimed films, since there would be no reasonable expectation of success in doing so. The modifications suggested by the Examiner clearly do not represent a situation with a finite, and in the context of the art, small or easily traversed, number of options that would convince an ordinarily skilled artisan of obviousness. *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.* Slip Op. 2007-1223, 2008 U.S. App. LEXIS 6786 (Fed. Circ., Mar. 31, 2008) Applicant therefore respectfully submits that for these reasons no *prima facie* case of Obviousness has been made out by the Examiner.

Finally, Applicant notes that new claim 7 and its dependent claims do not recite ethylene vinyl acetate, so that Cooper is not relevant to these claims. Independent consideration of these new claims is respectfully requested.

Reconsideration and withdrawal of the Rejection respectfully is requested.

D. Response to rejection of claims 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over Karaoglu in view of Cometto et al.

In response to the rejection of claims 4 and 5 under 35 U.S.C. 103(a) as being unpatentable over Karaoglu in view of International Publication No. WO 9520009 of Cometto et al. ("Cometto"), Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverses the Rejection.

As discussed with the Examiner, Applicant notes that that WO 9520009 is of Govoni et al.

The threshold showing required under §103 has been discussed above.

As discussed above, there is no teaching or disclosure in Karaoglu of blending an ethylene ester copolymer with a low density ethylene homopolymer having a density value of 0.915 to 0.932 g/ml, or the claimed film properties. Cometto does not remedy the deficiencies of Karaoglu. In addition, claims 4 and 5 recite a haze less than 16%, while Cometto's examples demonstrate haze values between 29 and 49%. In this way, Cooper actually teaches away from current claims 4 and 5.

Reconsideration and withdrawal of the rejection respectfully is requested.

E. Response to rejection of claims 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over Cooper in view of Cometto.

In response to the rejection of claims 4 and 5 under 35 U.S.C. 103(a) as being unpatentable over Cooper in view of Cometto, Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverses the Rejection.

As discussed with the Examiner, Applicant notes that that WO 9520009 is of Govoni et al.

The threshold showing required under §103 has been discussed above.

As discussed above, Cooper does not teach or suggest all the limitations in the claims. Cometto does not remedy the deficiencies of Cooper. In addition, claims 4 and 5 recite a haze less than 16%, while Cometto's examples demonstrate haze values between 29 and 49%. In this way, Cooper teaches away from current claims 4 and 5.

Reconsideration and withdrawal of the rejection respectfully is requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this Amendment, Applicant's attorney would welcome the opportunity to discuss the case with the Examiner.

The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

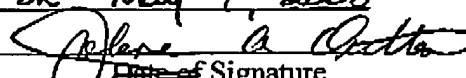
This is intended to be a complete response to the Office Action mailed December 7, 2007.

Respectfully submitted,



William R. Reid
Registration No. 47,894
Attorney for Applicant

facsimile transmitted to
I hereby certify that this correspondence is being deposited with
~~sufficient postage thereon with the United States Postal Service as first~~
~~class mail in an envelope addressed to: Mail Stop Amendment,~~
~~Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450~~
~~on May 7, 2008.~~
the United States Patent and Trademark Office
(571-273-8300) on May 7, 2008



Date of Signature
Tolene A. Outten

Basell USA Inc.
Delaware Corporate Center II
2 Righter Parkway, Suite 300
Wilmington, DE 19803 USA
Attorney's Telephone No.: 302-683-8178
Attorney's Fax No.: 302-731-6408